UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

UNIFIED SYSTEMS CORPORATION, INC.,

Debtor.
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Case No. 05-49133

Chapter 11

Judge Thomas J. Tucker

ORDER DENYING, WITHOUT PREJUDICE, CONFIRMATION OF DEBTOR'S SECOND AMENDED COMBINED LIQUIDATING PLAN, AND REQUIRING THE DEBTOR TO FILE AMENDED PLAN AND DISCLOSURE STATEMENT INCORPORATING PLAN MODIFICATIONS

This Chapter 11 case came before the Court on November 30, 2005 for a third hearing on confirmation of the Debtor's "Second Amended. . . Liquidating Plan," contained in the document filed September 9, 2005 by Debtor entitled "The Debtor's Second Amended Combined Liquidating Plan of Reorganization and Disclosure Statement" (Docket #79)(the "September 9 Plan"). In an Order filed September 12, 2005, the Court granted preliminary approval of the disclosure statement contained within this document, and scheduled a confirmation hearing and deadline for the filing of objections to confirmation of the Plan. *See* Order Granting Preliminary Approval the Debtor's Disclosure Statement, filed September 9, 2005 (Docket #78). The Debtor then solicited acceptance of the September 9 Plan by the creditors.

Before the first confirmation hearing held in this case, October 26, 2005, two creditors filed timely objections to confirmation of the Plan: Wolverine Bronze Company, and the State of Michigan. (Docket ##86, 88). At the October 26 confirmation hearing, Debtor's counsel

requested and obtained an adjournment, until November 16, 2005, in order to try to resolve the creditor objections. Debtor then filed a ballot report, reporting on the results of the creditor voting on the September 9 Plan. (Docket #90, filed October 28, 2005.)

At the November 16, 2005 hearing on confirmation, Debtor's counsel reported that the Debtor and Wolverine Bronze Company had resolved Wolverine's objections to confirmation, and described that resolution. Debtor's counsel then requested another adjournment, to allow more time for Debtor to resolve the objections of the State of Michigan. The Court adjourned the confirmation hearing until November 30, 2005. At the November 30 hearing, Debtor's counsel reported that the objections of the State of Michigan had been resolved, and described the resolution.

The resolution of the objections of Wolverine Bronze Company and the State of Michigan are in the form of agreed modifications to Debtor's September 9 Plan, which Debtor proposes to include in the order confirming the Plan. On this basis, at the November 30 hearing Debtor requested confirmation of the September 9 Plan, as modified in the proposed confirmation order. At the hearing, the Court questioned whether the modifications were material adverse changes to the treatment of Class 2, the general unsecured creditors class, which class had voted to accept the September 9 Plan. *See, e.g.*, Fed. R. Bankr. P. 3019. Debtor's counsel argued that they were not, and that in any event it did not matter, for purposes of confirming the September 9 Plan as modified by the proposed order confirming plan. This is so, Debtor's counsel argued, because (1) under the original September 9 Plan that was circulated to creditors for voting, Class 2 (general unsecured creditors) would not receive any distribution in

any event; and (2) even if the Court deemed Class 2 to reject the Plan as modified by the modifications contained within the proposed confirmation order, the Court could and should confirm that modified Plan over the dissent of Class 2 on a "cramdown" basis under 11 U.S.C. § 1129(b). The Court took the matter under advisement.

After reviewing the matter further, the Court concludes that the modifications to the September 9 Plan proposed by the Debtor, to resolve the objections of Wolverine Bronze Company and the State of Michigan, do materially and adversely change the treatment of the claims of the Class 2 general unsecured creditors, without proper and sufficient notice to the members of that Class to permit the members of that class to determine whether to vote to accept or reject the Plan as modified and whether to object to confirmation. Among other things, the proposed modifications materially increase the amount of the allowed administrative claim to be paid to Wolverine Bronze Company under § 2.1 of the Plan, and materially increase the amount of the allowed priority tax claim to be paid to the State of Michigan under § 2.3 of the Plan. These changes materially and adversely affect the ultimate distribution to the Class 2 creditors.

Debtor's argument, made at the November 30, 2005 hearing, that under the original September 9 Plan the Class 2 creditors would not receive any distribution under this liquidating plan, does not solve this problem. First, the September 9 Plan does not clearly disclose to the Class 2 members that they will receive no distribution. If anything, the September 9 Plan suggests that there is at least a distinct possibility that Class 2 members will receive a distribution under this liquidating Plan. Sections V-A through C (pp.27-28), including the Chapter 7 liquidation analysis therein, of the September 9 Plan/Disclosure Statement suggests that a

Chapter 11 liquidation as proposed in the Plan would be better for the holders of Class 2 claims because under that Plan the assets would not be sold at a forced liquidation value, and as a result it would be more economically feasible to pursue the Debtor's claims and causes of action under this liquidating Chapter 11 Plan as compared to what would happen in a Chapter 7 liquidation. The Debtor states in Section V-A (pp. 27-28) that the holders of Class 2 allowed unsecured claims would receive "a significantly reduced distribution (or no distribution) "in a Chapter 7 liquidation, and implies that they would or might receive a distribution under the proposed Chapter 11 liquidating Plan.

In any event, if it is the Debtor's position now that under the original September 9 Plan the Class 2 creditors were certain not to receive any distribution, the disclosure statement that accompanied the September 9 Plan plainly did not say this, and could not now be given final approval as containing "adequate information" under 11 U.S.C. § 1125. It seems highly unlikely that the six creditors in Class 2 who voted to accept the September 9 Plan understood from that the plan and disclosure statement that they were certain to receive no distribution under that Plan. Otherwise, why would they have voted to accept it?

Nor it is an answer to argue, as Debtor did at the November 30 confirmation hearing, that the proposed modifications do not matter because the Plan as modified could be confirmed on a "cramdown" basis over the dissent of Class 2. Among other problems with this argument, it overlooks the fact that if the modifications of the September 9 Plan had been disclosed to the Class 2 creditors in time for them to file timely objections to confirmation, one or more members

of that Class might have filed such objections, *e.g.*, on the basis that the Plan was not proposed in good faith. 11 U.S.C. § 1129(a)(3).

For these reasons, the Court concludes that the Debtor's September 9 Plan, as modified by the proposed modifications that Debtor described at the November 30, 2005 confirmation hearing, cannot be confirmed at this time. Nor can the Court give final approval to the Debtor's September 9 disclosure statement, in light of the later plan amendments and in light of the position taken by the Debtor at the November 30 hearing that the September 9 Plan (and also that plan as now modified) would certainly yield no distribution to the Class 2 creditors.

Rather than now requiring Debtor to show cause why this case should not be converted or dismissed, the Court will first give Debtor an opportunity to file an amended plan and disclosure statement. This document should contain all the proposed modifications that Debtor wants to make to its September 9 Plan, and should include any needed amendments to the disclosure statement, including, for example, if this remains the Debtor's position, a disclosure that under the amended plan the Class 2 creditors will receive no distribution. The Court will then review the amended plan and disclosure statement for preliminary approval of the disclosure statement. If such preliminary approval is granted, the Court will then permit Debtor to circulate the amended Plan to creditors for voting and set a new deadline for the filing of any objections to the confirmation of the amended plan. Accordingly,

IT IS ORDERED that confirmation of "The Debtor's Second Amended Combined Liquidating Plan of Reorganization and Disclosure Statement," filed September 9, 2005, is

denied, and final approval of the disclosure statement contained within that document is denied, all without prejudice.

IT IS FURTHER ORDERED that Debtor must file an amended ("Third") combined plan and disclosure statement no later than December 12, 2005.

IT IS FURTHER ORDERED that Debtor must submit to chambers, through the Court's electronic order-submission program, a redlined version of the amended plan and disclosure statement, showing all of the changes made to the Second Amended Plan and Disclosure Statement that was filed September 9, 2005. (This will facilitates the Court's prompt review of the amended Disclosure Statement for preliminary approval.)

Date: December 5, 2005

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

cc: Michael Zousmer
Claretta Evans